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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Raynell Carmichael, D-25366
2 San Quentin State Prison-2N1-L
3 San Quentin, CA. 94974

4 In Propria Persona

5 IN THE UNITED STATES DISTRICT COURT

6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7
8 Raynell Carmichael

9 Plaintiff

Case No. CV-07-5622 CW

10
11 VS.

MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S
MOTION FOR APPOINTMENT
OF COUNSEL.

12
13 James E. Tilton, et al.,

14 Defendants

15
16 MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR

17 APPOINTMENT OF COUNSEL

18
19 STATEMENT OF THE CASE:

20 This is a civil rights case filed under 42 U.S.C. Section 1983 by
21 a state prisoner asserting claims of denial of adequate medical
22 care and treatment.

23 The plaintiff seeks damages as to all claims.

24
25 STATEMENT OF THE FACTS:

26 The complaint alleges that the plaintiff was denied adequate and
27 timely medical care and treatment. Plaintiff hereby incorporates by
28 reference the statement of facts in the complaint and attached

1 inmate administrative appeals as being a true and correct factual
2 statement.

3
4 **ARGUMENT**

5 **THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF**

6 In deciding whether to appoint counsel for an indigent litigant the
7 court should consider "the factual complexity of the case, the
8 ability of the indigent to investigate the facts, the existence of
9 conflicting testimony, the ability of the indigent to present his
10 claims and complexity of the legal issues" *abdullah v Gunter*, 949 F.
11 2d 1032,1035 (8th Cir 1991) (citation omitted), cert denied 112 S.
12 1995 (1992). In addition, courts have suggested that the most
13 important factor is whether the case appears to have merit. *cooper*
14 *vs A. Sargenti Co Inc*, 877 F 2d 170, 173 (2d Cir 1989). Each of
15 those factors weighs in favor of appointing counsel in this case.

16
17 **1. Factual Complexity**

18 The plaintiff alleges that he was provide inadequate medical care
19 and treatment by state prison officials, and supervisory officials
20 took no action to prevent the constitutional deprivations.

21 Based on the claim for denial of medical care and treatment, it will
22 be necessary to present a medical expert witness or to cross examine
23 medical witnesses called by the defendants, or both. The presence of
24 medical or other issues requiring expert testimony supports the
25 appointment of counsel. *Moore VS Mabas* 976 F 2d 268, 272 (5th Cir
26 1992) : *Jackson vs County of McClean* 953 F 2d 1070, 1073 (7th Cir
27 1992); *Tucker vs Randall*, 948 F 2d 388,392 (7th Cir 1991).

1 2. The ability to investigat. The plaintiff is confined to state
2 prison. The prison is overcrowded and there is a modified program in
3 effect to assure that the Reception inmates and mainline inmates do
4 not mix, thus limiting the plaintiff's access to the law library,
5 Plaintiff is not able to locate and interview medical staff,
6 supervisors and other correctional administrators He is in the same
7 situation as an inmate who has been transferred to a different
8 institution, a factor that several courts have cited in appointing
9 counsel. Tucker vs Randall, 948 F 2d 388, 391-92 (7th Cir. 1991):
10 Gatson vs Goughlin, 679 F Supp. 270, 273 (WDNY 1988) : Armstrong V.
11 Snyder, 103 F.R.D. 96 105 (ED.Wis 1984).
12 In addition this case will require considerable discovery concerning
13 the identity of correctional staff at the prison, administrators,
14 staff of the Federal Receiver, his stories of the medical staff with
15 prior records of constitutional deprivations. See Turker vs Dickey,
16 613 F. Supp. 1124-1133-34 (WDWis 1995) (need for discovery supported
17 appointment of counsel).

18
19 3. Conflicting testimony. The plaintiff's account of the denial of
20 medical care and treatment will be squarely in conflict with the
21 defendant's accounts.

22 The existence of these credibility issues supports the appointment
23 of counsel. Gatson v. Goughlin 679 F Supp. 270,273 (W.D.N.Y. 1988).

24
25 4. The availability of the indigent to present his claim. The
26 plaintiff is an indigent prisoner with no legal training, a factor
27 that supports the appointment of counsel. Whisemant vs Tumm, 739 F
28 2d. 160, 163 (4th Cir. 1984). In addition, he is impaired by what

1 law library access that he does have based on the prison overcrowding
2 situation Reyes v Johnson, 969 F 2d 700, 703-04 (8th Cir 1992)
3 (citing lack of ready access to a law library as a factor supporting
4 appointment of counsel.)
5

6 5. Legal Complexity + The large number of defendants, some of whom
7 are supervisory officials, presents complex legal issues of
8 determining which defendants were sufficiently personally involved
9 in the constitutional violations to be held liable. In addition the
10 plaintiff has asked for a jury trial, or the EARLY SETTLEMENT PROGRAM
11 which requires much greater legal skills that the plaintiff has or
12 can develop. See Abdullah vs. Gunter, 949 F 2d 1032, 1036 (8th Cir.
13 1991) (citing jury demand as a factor supporting appointment of counsel
14 cert denied 112 S. Ct 1995 (1992).
15

16 6. Merit of the case. The plaintiff's allegations, if proved, clearly
17 would establish a constitutional violation. California officials have
18 already admitted that the state medical system is deficient and the
19 Federal District Court has appointed a Receiver to run the prison
20 medical system.
21

22 The allegations of denial of medical care and treatment amount to
23 "Intentionally interfering with treatment once prescribed", which
24 the Supreme Court has specifically cited as an example of unconstitu
25 tional deliberate indifference to prisoners' medical needs. estell
26 vs Gamble, 429 U.S. (& S Ct 285 (1976).
27
28

CONCLUSION

For the foregoing reason, the court should grant the plaintiff's motion and appoint counsel in this case.

Respectfully Submitted

/s/ *Raynell Carmichael*
Raynell Carmichael, D-25366
San Quentin State Prison-2N-1-L
San Quentin, CA. 94974

Date: JANUARY 6, 2008,

In Propria Person